

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

BRADLEY DRUMMOND,

*Petitioner,*

vs.

STATE OF NEVADA,

*Respondent.*

3:10-cv-00783-RCJ-RAM

ORDER

Petitioner has submitted an application (#1) to proceed *in forma pauperis* for a habeas action without also submitting a habeas petition. The Court has reviewed its records, and it does not appear that petitioner has filed a petition or other proceeding separately in another action without a pauper application.

The papers submitted present no claims, and they are subject to multiple defects.

First, the application to proceed *in forma pauperis* is not submitted on a proper form with the proper attachments. Under Local Rule LSR 1-1, a pauper application must be on the Court's required form. Petitioner's application is on what appears to be an adaptation of a form for seeking leave to pursue a pauper appeal from a federal district court decision. Moreover, both an inmate account statement and a financial certificate that is properly executed by an authorized institutional officer are required by 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2. Petitioner did attach an executed financial certificate, but he did not attach an inmate account statement from the prior six months. The financial affidavit that he attached is not used in this context.

1 Second, the Court does not have jurisdiction over proceedings brought against the sole  
2 respondent named in the application, the State of Nevada. Petitioner may not sue the State  
3 in federal court. State sovereign immunity under the Eleventh Amendment bars suit in federal  
4 court against a State regardless of the relief sought. *See, e.g., Pennhurst State School &*  
5 *Hospital v. Halderman*, 465 U.S. 89, 100-01, 104 S.Ct. 900, 908, 79 L.Ed.2d 67 (1984).

6 Third, petitioner failed to submit a petition.

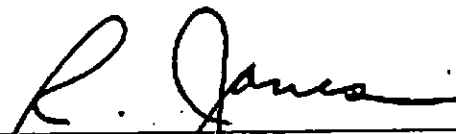
7 Accordingly, the pauper application will be denied and the action will be dismissed  
8 without prejudice. The present dismissal, in and of itself, is without prejudice to the filing of  
9 a new action. However, nothing in the present dismissal precludes the dismissal of a later-  
10 filed action on the basis of, if applicable, untimeliness, lack of exhaustion, procedural default,  
11 or any other basis.

12 IT THEREFORE IS ORDERED that the application (#1) to proceed *in forma pauperis*  
13 is DENIED without prejudice and that this action shall be DISMISSED without prejudice to the  
14 filing of a petition in a new action that is accompanied by a new and properly completed  
15 application to proceed *in forma pauperis* with all required attachments.

16 The Clerk shall send petitioner two copies of an application form to proceed *in forma*  
17 *pauperis* for incarcerated persons, two copies of a Section 2254 petition form, the instructions  
18 for both forms, and a copy of the papers that he submitted.

19 The Clerk shall enter final judgment accordingly, dismissing this action without  
20 prejudice.

21 DATED: December 29, 2010

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25 ROBERT C. JONES  
26 United States District Judge  
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